



2015-058

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

July 31, 2015

501 WASHINGTON AVENUE  
P.O. BOX 300152  
MONTGOMERY, AL 36130-0152  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

Honorable Tony A. White  
Mayor of the Town of Oak Grove  
2364 Forest Glen Road  
Oak Grove, Alabama 35150

Municipalities – Municipal Funds – Fire  
Departments – Donations – Public Purpose  
– Talladega County

Because the Town of Oak Grove (“Town”) has the authority to make expenditures to provide a fire department, the Town may expend municipal funds to raise money for the Oak Grove Volunteer Fire Department if the town council determines the expenditure serves a public purpose.

Dear Mayor White:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Oak Grove.

QUESTIONS

May the Town of Oak Grove use municipal funds to raise money for the Oak Grove Volunteer Fire Department?

Alternatively, can the Oak Grove Volunteer Fire Department raise funds through the efforts of the members of the fire department?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Oak Grove Volunteer Fire Department (“Fire Department”) is a municipal fire department that is not separately incorporated. The Fire Department would like the Town to contract with a marketing service. The marketing service will provide printed materials, related computer services, and a direct-mailing service. This

company would act solely as a printing and mailing provider. You also provided this Office with a copy of the proposed contract between the marketing company and the Fire Department. This agreement would allow the company to solicit the Town's citizens, through a mailer, for donations to the Fire Department. Although you are aware of other municipalities that expend funds to raise money for their fire departments in this same manner, you question the use of public funds in this manner as it conflicts with your understanding of two previous opinions issued by this Office.

Your inquiry referenced the opinion to Honorable John Jackson, Mayor, Town of White Hall, dated April 19, 1988, A.G. No. 88-00272, and the opinion to Honorable James Hagood, Mayor, Town of Rogersville, dated November 30, 1995, A.G. No. 96-00051. In *Jackson*, this Office determined that the Town of White Hall could not expend municipal funds to rent video tapes and charge an admission fee for the sole purpose of fundraising. *Jackson* at 2. In *Hagood*, this Office responded to several fundraising issues that focused on the ability of a firefighters auxiliary to fundraise for a fire department. In particular, question three of that opinion questioned whether municipal-owned facilities and equipment could be used for fundraisers; alternatively, question six sought guidance regarding the ability of fire department funds to be used to finance fundraisers. In response to both of these inquiries, this Office determined that neither municipal facilities nor municipal funds could be used for fundraising purposes. *Hagood* at 3 & 5.

These opinions, however, were modified in 2003 by an opinion to Honorable Charles B. Cole, Mayor, Town of New Brockton, dated March 28, 2003, A.G. No. 2003-115. In that opinion, the Town of New Brockton sought to improve the appearance of the town by installing sidewalks. The town applied for grants from the U.S. Department of Transportation and other governmental agencies, which required a cash match. This Office was asked whether city officials could solicit funds from businesses and local residents to raise money to meet the match requirement necessary to receive a state or federal grant. *Cole* at 1. In applying the public-purpose doctrine to this particular inquiry, this Office determined that a municipality could expend public funds when the municipality determines that a public purpose is served and there was authority for the contemplated action.

In addition to modifying *Jackson* and *Hagood*, the *Cole* opinion also expressly modified the opinion to Honorable Edmon Phillips, Mayor, Town of Kinston, dated May 30, 1990, A.G. No. 90-00300. In *Phillips*, this Office concluded that the Town of Kinston or an unincorporated recreation board could sponsor fundraising events for the establishment of a municipal recreational park, but municipal funds could not be used to sponsor such activities. The *Cole* opinion reasoned that *Phillips* had failed to analyze the inquiry in the light of the public-purpose doctrine. Based on the conclusions reached in *Cole*, the

modification to *Phillips* now concludes that public funds may be used to sponsor fundraising activities if a public purpose is served.

This Office has explained that a public purpose is served if the objective is to promote public health, safety, morals, security, prosperity, contentment, and the general welfare of the community. *Slawson v. Alabama Forestry Comm'n*, 631 So. 2d 953, 956 (Ala. 1994), *citing Opinion of the Justices* No. 269, 384 So.2d 1051, 1053 (Ala. 1980). In *Slawson*, the court determined that public funds may be expended if the governing body determines that such expenditure serves a public purpose for which the public entity was created. *See, generally, Slawson*, 631 So. 2d at 956-57; opinion to Honorable Robert S. Presto, Escambia County Attorney, dated August 24, 1995, A.G. No. 95-00299 at 4.

In explaining the public-purpose analysis, and in an attempt to assist agencies with determinations with respect to contemplated expenditures, this Office has stated the following:

To determine whether such a purpose is public, the [governing body] must look to the statutes setting forth the powers of [that entity]. If, within such powers, there exists the authority to promote [the action at issue], then the [governing body] need only decide whether [the expenditure] will help to accomplish that purpose.

*Presto* at 4; opinion to Honorable Brenda Gale Blalock, City Clerk, City of Montgomery, dated October 9, 2012, A.G. No. 2013-005 at 3-4.

Section 11-43-140 of the Code provides, in pertinent part, that “cities and towns may maintain and operate a volunteer or paid fire department and may do any and all things necessary to secure efficient service.” ALA. CODE §11-43-140 (2008). This provision is broad and grants municipalities the authority to do all things necessary to secure efficient service for its fire department. Moreover, section 9-3-18 of the Code authorizes any municipality to donate money or any other thing of value to an organized volunteer fire department. ALA. CODE § 9-3-18 (Supp. 2014). Donations received as a result of section 9-3-18 of the Code should generally be disposed of pursuant to sections 41-16-120 through 41-16-125 of the Code. ALA. CODE §§ 41-16-120 to 41-16-125 (2013). Finally, the Supreme Court of Alabama has stated “that volunteer fire departments and rescue squads are not to be characterized as private entities engaged in private enterprise, but rather as having a lawful public purpose.” *See Opinion of the Justices* No. 261, 373 So. 2d 290, 292 (Ala. 1979).

If the Town of Oak Grove determines that expending money to a marketing service is necessary to secure efficient service for the Fire

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Department, and such action would result in a direct benefit to the public in the form of the services that may be offered by the Fire Department, then the Town may contract with a marketing agency.

You also question whether members of the Fire Department may engage in fundraising efforts. Based on the conclusions reached in *Cole*, it is the opinion of this Office that members of the Oak Grove Volunteer Fire Department may assist or participate in fundraising efforts, assuming the Town determines that a public purpose is served by such actions.

### CONCLUSION

Because the Town of Oak Grove has the authority to make expenditures to provide a fire department, the Town may expend municipal funds to raise money for the Fire Department if the town council determines the expenditure serves a public purpose.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/MG/adb

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